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MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 1, 2018/2019

UCV4612 – CIVIL PROCEDURE I

(All Sections / Groups)

17 OCTOBER 2018

Reading Time: 2:30 pm-2:45 pm
(15 Minutes)

Answering Time: 2:45 pm-5:45 pm
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes **ONLY** in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.
2. This Question paper consists of **5** pages with **5** Questions only.
3. This Question paper consists of 2 sections. Attempt **ONE** question only in Section A and all **THREE** questions in Section B. The distribution of the marks for each question is given.
4. Students are only allowed to bring in **CLEAN AND ORIGINAL COPY** of Rules of Court 2012 into the exam venue. "Clean" is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.
5. Please write all your answers in the Answer Booklet provided.

SECTION A (Answer ONE question only)**QUESTION 1**

- (a) On 20 November 2010, one Kassim bin Selamat ("the deceased") was run over by the motorjeep driven by the first defendant namely Labu bin Kundur. The first defendant was at the material time employed by the second defendant, i.e the Jabatan Kerja Raya Negeri Perak. Six months later on 25 April 2011, the deceased succumbed to his injuries. The plaintiff, Manisah binti Kasim, as the administratrix of the estate of the deceased instituted this action against the defendants in July 2015 for damages on the ground that the accident was caused solely through the negligence of the first defendant. The defendants thereupon applied to strike out the action under Order 18 Rule 19(1)(c) or (d) of the Rules of Court 2012 on the ground that the claim was barred by limitation under section 2(a) of Public Authorities Protection Act. The plaintiff refuted the contention and argued that by operation of section 24 of the Limitation Act 1953, the limitation period in section 2(a) of PAPA commenced only upon the extraction of the grant of letters of administration by the deceased's beneficiaries. The plaintiff referred to the affidavit in reply wherein the delay in the extraction of the grant of letters of administration was explained. The plaintiff also contended that the plaintiff should not be penalised for the delay as the necessary relevant documents had to be obtained and the letters of renunciation had to be executed by the several family members of the deceased. The plaintiff had promptly filed the claim in the Grik Magistrate's Court on 11 December 2014 upon the extraction of the letters of administration on 4 December 2014. The action was subsequently withdrawn and reinstituted in July 2015 in the Ipoh Magistrate's Court for the convenience of the defendants who are based in Ipoh. The magistrate accepted the plaintiff's interpretation of section 24 and accordingly dismissed the application. The defendants appeal.

Discuss the following issues: -

- (i) whether the Plaintiff's cause of action is time-barred;
(15 marks)
- (ii) parties to the action.
(5 marks)
- (b) Write a short note on interpleader proceeding.
(5 marks)

(Total: 25 marks)

Continued...

QUESTION 2

- (a) The third party appointed the defendant as subcontractor for the construction and completion of a school ('the works'). In turn, the defendant entered into a joint venture agreement ('JV Agreement') with the plaintiff to undertake the works wherein all proceeds from the contract would be shared between the defendant and the plaintiff at 8% and 92% respectively. The works were completed and a final interim certificate was issued by the third party to the defendant certifying the final sum of RM300,000 payable to the defendant. The final interim certificate was accepted and endorsed by the defendant and the defendant received payment pursuant to the interim final certificate. As required by the contract, the defendant provided to the third party a statutory declaration that there was no further sum due to the defendant. The plaintiff alleged that the defendant did not pay the plaintiff the sum of RM2,037,459.23 pursuant to the JV Agreement for work done and thus commenced this action against the defendant. The defendant consequently commenced the third party action against the third party for indemnity. The third party applied to strike out the defendant's third party action pursuant to O 18 r 19 of the Rules of Court 2012 ('the ROC') on the grounds that: (a) the defendant had failed to take out the notice of application for directions under O 16 r 4 of the ROC; (b) the third party notice was devoid of particulars of how the third party was responsible for payment to the plaintiff; (c) there was no privity of contract between the plaintiff and the third party; and (d) the third party had settled its obligations by the payment of the RM300,000. The defendant denied that the RM300,000 payment was final settlement on the grounds that it was subject to the agreement of the plaintiff. The defendant also denied making the statutory declaration and claimed that the statutory declaration was procured by way of fraud or forgery.

Discuss on whether the defendants' cause of action against the third party should be successful.

(10 marks)

- (b) Order 15 rule 6A Rules of Court 2012 serves to overcome the difficulties of suing the estate of a person who had died before the commencement of the action and in whose estate no grant of probate or administration had been made.

Discuss.

(10 marks)

- (c) Explain what *locus standi* is.

(5 marks)

(Total: 25 marks)

Continued...

SECTION B (Answer all THREE questions)**QUESTION 3**

- (a) The third defendant/applicant, filed an application under O 13 r 1 and O 19 of the Rules of Court 2012 ("the ROC") to set aside the judgment in default of appearance obtained by the plaintiffs on 2 October 2009 against them. The third defendant alleged that they were only served with the default judgment of appearance order on 28 September 2013, a good four years later. Thereafter, the third defendant filed this application (said application) on 13 January 2014, three and a half months later to set-aside the default judgment. The said application was heard on 17 February 2014. On the hearing of the said application, the plaintiffs raised three preliminary objections, i.e. that the said application is defective; the said application was filed out of time; and there was no application made to extend the time to file the said application and to explain the inordinate delay by the third defendant.

Based on the above, discuss the preliminary objections made on the hearing application to set aside the default judgment.

(10 marks)

- (b) Plaintiff served the writ of summons and statement of claim on the defendant and via A.R. registered post. However, the writ of summons and statement of claim were not served because they were returned uncollected. Consequently, the plaintiff applied for substituted service to serve the writ of summons and statement of claim and the Court on 26 June 2012 gave the order for substituted service requiring the Plaintiff to place an advertisement in the News Straits Times as well as to display the writ of summons and statement of claim on the notice board of the Court premises. By reason of the defendant's failure to enter appearance, the default judgment was obtained against the defendant on 23 July 2012. The default judgment was served by the plaintiff's solicitors on the defendant by registered post on 2 October 2012. Defendant applied for an application to set aside the default judgment on the ground that the default judgment taken is invalid.

Discuss the validity of the default judgment taken against defendant.

(10 marks)

Continued...

- (c) "In my opinion the object of the new O.6 r. 7 was to make it really tight as to when a writ can be renewed. The word "must" appearing in O.6 r.7 (2A) is not usually used in Malaysian legislations. Normally the word used is "shall". So in this case, when the word "must" is used, the intention is to fully ensure that it is complied with and no discretion is to be given as far as the compliance with the prerequisites is concerned. "Must" is a very strong word; in my opinion it is stronger than the word "shall"."

Duli Yang Maha Mulia Tunku Ibrahim Ismail Ibni Sultan Iskandar Al-Haj Tunku Mahkota Johor v Datuk Captain Hamzah bin Mohd Noor [2009] MLJU 401, per Zaki Tun Azmi, Federal Court (Putrajaya).

Discuss the above statement.

(5 marks)

(Total: 25 marks)

QUESTION 4

The plaintiff sold and delivered goods to the defendant. The defendant acknowledged receipt of the goods by affixing the defendant's rubber stamp, signature and the respective date on each delivery. There were four deliveries all together. The defendant made part payment and was given rebates. The plaintiff claimed the outstanding balance sum then due and owing, particulars of which had been rendered. The defendant alleged that the goods sold and delivered were not of merchantable quality. The defendant further denied it had ordered or purchased the goods from the plaintiff. Plaintiff seek a prompt and expeditious disposition of the action against defendant.

Explain the following:-

- (a) the procedure to be adopted and the preliminary requirements for such procedure;
- (b) the principle to be followed by the court under such procedure;
- (c) the issues that may be raised by the defendant to oppose the procedure.

(10 marks)

(8 marks)

(7 marks)

(Total: 25 marks)

Continued...

QUESTION 5

The plaintiff, a company in Kuala Lumpur, had filed an action against the defendant for the payment of a friendly loan for the sum of RM950,000 plus interest at the rate of 8% per annum from the date of the judgment and costs. The action was filed in Sessions Court Kuala Lumpur by way of originating summons. In replying to the affidavit, the defendant denied that he had entered the friendly loan as during the said date of the agreement he was performing his *hajj*. The defendant also raised issue on limited jurisdiction of the sessions court and also on forum of convenience. Defendant contended that, since he resides in Ipoh, the proper forum to hear the matter is the High Court in Ipoh.

Based on the above, discuss: -

- (a) the proper forum of convenience to hear the matter; (7 marks)
- (b) the limited jurisdiction of sessions court to hear the matter; (8 marks)
- (c) the mode of originating process filed by the plaintiff. (10 marks)

(Total: 25 marks)

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